No. 83-712



In The

# Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF NEW JERSEY,

*Petitioner,*

*-vs-*

T.L.O., a Juvenile,

*Respondent.*

## ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

## BRIEF FOR PETITIONER

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## QUESTION PRESENTED FOR REVIEW

Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school.

## PARTIES TO THE PROCEEDING BELOW

In addition to the captioned parties, the parties before the New Jersey Supreme Court included Jeffrey Engerud, a defendant now deceased, and, as *amici curiae*, the New Jersey School Boards Association and the American Civil Liberties Union of New Jersey.

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# BRIEF FOR PETITIONER

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## OPINIONS BELOW

*State in the Interest of T.L.O., 178 N.J. Super. 329, 428 A.2d 1327 (J.D.R.C. 1980), aff'd o.b. in part and rev'd o.g. in part, 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982), rev'd, 94 N.J. 331, 463 A.2d 934 (1983).*

## JURISDICTION

The judgment of the New Jersey Supreme Court which is at issue in this matter was entered on August 8, 1983, and a petition for *certiorari* was timely filed on October 7, 1983. The jurisdiction of this Court is invoked pursuant to the provisions of *28 U.S.C. § 1257(3)*, with *certiorari* to the Supreme Court of New Jersey having been granted on November 28, 1983.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

*United States Constitution, Amendment IV*

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and No Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*N.J. Stat. Ann. 24:21-19 (West 1940 & Supp. 1983). Prohibited Acts*

> A. Manufacturing, distributing, or dispensing - Penalties
>
> a. Except as authorized by this act, it shall be unlawful for any person knowingly or intentionally:
>
> (1) To manufacture, distribute, or dispense, or to possess or have under his control with intent to manufacture, distribute, or dispense, a controlled dangerous substance; . . . .

*N.J. Stat. Ann. 24:21-20 (West 1940 & Supp. 1983). Prohibited Acts*

> B. Possession, use or being under influence - Penalties
>
> a. It is unlawful for any person, knowingly or intentionally, to obtain, or to possess, actually or constructively, a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this section with respect to: . . .
>
> (4) Possession of more than 25 grams of marijuana, including any adulterants or dilutants, or more than 5 grams of hashish is guilty of a high misdemeanor and shall be punished by imprisonment for not more than 5 years, a fine of not more than $15,000.00 or both; provided, however, that any person who violates this section with respect to 25 grams or less of marijuana, including any adulterants or dilutants, or 5 grams or less of hashish is a disorderly person.



## STATEMENT OF THE CASE

On the morning of March 7, 1980, a teacher of mathematics at Piscataway High School entered the girls restroom and found the juvenile-respondent T.L.O. and a girl named Johnson holding what the teacher perceived to be lit cigarettes. (MT20-1 to 25).[1] Smoking was not permitted and the girls were thus committing an infraction of the school rules. The girls were taken to the principal's office where they met with Theodore Choplick, the assistant vice-principal. (MT21-1 to 3; MT21-24 to 22-11; MT31-18 to 20; MT33-20 to 34-10).

Mr. Choplick asked the two girls whether they were smoking. Miss Johnson acknowledged that she had been smoking, and Mr. Choplick imposed three days attendance at a smoking clinic as punishment. (T49-24 to 50-7). T.L.O. denied smoking in the lavatory and further asserted that she did not smoke at all. (MT27-10 to 17). Mr. Choplick asked T.L.O. to come into a private office. (MT27-14 to 21; MT30-22 to 31-17).

Once inside this office, Mr. Choplick requested the juvenile's purse, and she gave it to him. (MT27-24 to 28-7). A package of Marlboro cigarettes was visible inside the purse. (MT28-9 to 11). Mr. Choplick held up the Marlboros and said to the juvenile, "You lied to me." (MT28-14 to 18). In plain view next to the Marlboros was a package of "Easy Roll" rolling papers for cigarettes. (MT28-19 to 24; T16-12 to 14). Upon being confronted with the rolling papers, the juvenile denied that they belonged to her. (MT29-5 to 24).

On the basis of his experience, Mr. Choplick understood possession of rolling papers to indicate that a person is smoking marijuana and looked further into the purse. There he found marijuana, drug paraphernalia, $40 in one-dollar bills and documentation of T.L.O.'s sale of marijuana to other students. (MT29-7 to 9; T15-18 to 16-1; T41-5 to 13). Mr. Choplick called T.L.O.'s mother and then notified the police. (MT41-5 to 13).

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1 "MT" refers to the transcript of the motion to suppress heard before the Juvenile and Domestic Relations Court on September 26, 1980;

"T" refers to the transcript of trial on March 23, 1981, the transcript of the juvenile's plea of guilty to other complaints on June 2, 1981, and the transcript of sentencing on January 8, 1982, all contained in one volume.

T.L.O.'s mother acceded to a police request to bring her daughter to police headquarters for questioning. (T18-12 to 18). Once at headquarters, T.L.O. was advised of her rights in her mother's presence and signed a *Miranda*[2] rights card so indicating. (T20-3 to 21). The officer then began to question T.L.O. in her mother's presence. (T23-4 to 6). T.L.O. admitted that the objects found in her purse belonged to her. She further admitted that she was selling marijuana in school, receiving $1 per "joint," or rolled marijuana cigarette. T.L.O. stated that she sold between 18 and 20 joints at school that very morning, before the drug was confiscated by the assistant vice-principal. (T22-2 to 15). A delinquency complaint charging the juvenile with possession of marijuana with the intent to distribute, contrary to *N.J. Stat. Ann. 24:21-19(a)(1) (West 1940 & Supp. 1983)* and *N.J. Stat. Ann. 24:21-20(a)(4) (West 1940 & Supp. 1983)*, was then drafted and filed the same day. Because the offense occurred on school property, the school, in accordance with its published procedures, administratively suspended the juvenile for ten days.

On September 26, 1980, the trial court considered and denied the juvenile's motion to suppress evidence. *State in the Interest of T.L.O., 178 N.J. Super. 329, 336-343, 428 A.2d 1327, 1330-1334 (J.D.R.C. 1980), aff'd o.b. in part and rev'd o.g. in part, 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982), rev'd 94 N.J. 331, 463 A.2d 934 (1983).* On March 23, 1981, the juvenile was tried and, at the conclusion of trial, she was found guilty and adjudicated delinquent. (T69-6 to 8). On January 8, 1982, T.L.O. was sentenced to probation for one year with the special condition that she observe a reasonable curfew, attend school regularly and successfully complete a counselling and drug therapy program.

On February 11, 1982, the juvenile filed a Notice of Appeal to the Superior Court of New Jersey, Appellate Division. On June 30, 1982, the Appellate Division, with one judge dissenting, affirmed the denial of the motion to suppress evidence seized in the search of the juvenile's purse, for the reasons expressed in the trial court's reported opinion. *185 N.J. Super. 279, 448 A.2d 493.*

On July 16, 1982, the juvenile filed a Notice of Appeal to the Supreme Court of New Jersey. On August 8, 1983, the State Supreme

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2 *Miranda v. Arizona, 384 U.S. 436 (1966).*



Court held that the Fourth Amendment exclusionary rule applies to searches and seizures conducted by school officials of students in public schools. *94 N.J. 331, 463 A.2d 934.*

In that same opinion, the New Jersey Supreme Court applied the same principle in the companion case of *State v. Engerud*, involving a search of a high school student's locker pursuant to information that the student was selling controlled dangerous substances in the school. Shortly after the date of the decision, the defendant Engerud was killed in a motorcycle accident, thus mooting any petition in that case.

## SUMMARY OF ARGUMENT

The exclusionary rule should not be applied to a search of a student or his or her belongings by a public school official in the pursuit of a school disciplinary objective. Because a school official's main concern is education, he is not primarily interested in whether a conviction is later obtained as a result of his disciplinary activities. He conducts searches too infrequently to adapt his methods to highly technical rules and, therefore, application of the exclusionary rule would have no rational bearing on deterring any improper searches by such official. Any incremental deterrent effect on the school official of suppression in a later criminal proceeding would be far outweighed by the detrimental effect upon society occasioned by the suppression of probative evidence of criminality in the school system. Indeed, assuming *arguendo* that exclusion of evidence could deter unreasonable searches by school officials, application of the exclusionary rule would exact too great a societal cost by impairing the school authorities' capability of enforcing school discipline.



## LEGAL ARGUMENT

### THE FOURTH AMENDMENT EXCLUSIONARY RULE SHOULD NOT BE APPLIED TO SEARCHES CONDUCTED BY PUBLIC SCHOOL OFFICIALS IN SCHOOL.

This case comes before the Court as a result of a school official opening a schoolgirl's purse and finding marijuana, drug paraphernalia, cash and other evidence documenting the girl's sale of drugs to her classmates. The evidence was turned over to police and thereafter used in a juvenile delinquency proceeding. While the trial court and intermediate state appellate court found the search of the purse to be reasonable, the Supreme Court of New Jersey ruled the search unreasonable under the Fourth Amendment and, applying the exclusionary rule, suppressed the evidence obtained in the search. Petitioner, the State of New Jersey, urges this Court to hold that the exclusionary rule is inapplicable to exclude evidence discovered in searches conducted by public school officials in school pursuant to their obligation to maintain school discipline.

While the Fourth Amendment proscribes unreasonable searches conducted by government agents, the exclusionary rule is not coextensive with violations of that amendment and is designed to reach only actions by law enforcement officials. Indeed, application of the exclusionary rule has never been sanctioned by this Court in any context other than as a remedy against unconstitutional searches and seizures by law enforcement officers. The first step in any analysis is to recognize this distinction between the Fourth Amendment and the associated exclusionary rule. The Fourth Amendment proscribes all unreasonable searches conducted by government agents; operation of the exclusionary rule as a remedy for Fourth Amendment violations is limited to those unreasonable searches conducted by law enforcement officers.

Logic, public policy and the history of the Fourth Amendment exclusionary rule all militate against application of this sanction against

those who, like school authorities, are not directly involved in law enforcement.[3] The purpose of the exclusionary rule is to deter unlawful conduct on the part of law enforcement authorities by not allowing those involved in law enforcement to benefit from the fruits of such conduct. For those officials, such as school personnel, who are not involved in law enforcement nor charged with that responsibility, however, the exclusion from a criminal proceeding of evidence will have little meaning. Thus, the exclusionary rule can have little or no deterrent impact upon their actions. A brief review of the development of the Fourth Amendment exclusionary rule will clearly demonstrate that the purpose of the rule is the deterrence of unlawful conduct and that the rule is intended to be invoked solely against law enforcement officials.

This Court first considered application of an exclusionary rule to remedy Fourth Amendment violations in *Adams v. New York, 192 U.S. 585 (1904).*[4] In *Adams*, federal law enforcement officers unlawfully seized papers of the defendant which documented his participation in illegal lotteries. *Id. at 587-589.* The defendant objected to the introduction of this evidence at his trial on the basis that the officers had exceeded the scope of the warrant. *Id. at 587.* This Court noted that the Fourth Amendment was intended to prevent violations of citizens' privacy "by officers of the law" and to remedy such violations, *id. at 598*, and opined that law enforcement officers conducting an illegal search "would be responsible for the wrong done." *Id. at 595.* The Court then ruled that, regardless of the constitutionality of the underlying search, the evidence seized was legally competent under the rules of evidence and its admission was therefore justified. *Id. at 595-596.*

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3 It could be argued that the Fourth Amendment itself is inapplicable to school authorities. This precise holding has been reached by some states. *See In re Donaldson, 269 Cal.App.2d 509, 75 Cal.Rptr. 220 (Ct. App. 1969); People v. Stewart, 63 Misc.2d 601, 313 N.Y.S.2d 253 (N.Y. Crim. Ct. 1970); Commonwealth v. Dingfelt, 227 Super. 380, 323 A.2d 145 (Pa. Super. Ct. 1974); Mercer v. State, 450 S.W.2d 715 (Tex. Ct. Civ. App. 1970).*

4 Previously, in a quasi-criminal tax forfeiture case, the Court had prohibited the government from compelling a defendant to produce documentary evidence necessary for proof of the government's case, but had justified that suppression under the Fifth Amendment's privilege against self-incrimination. *Boyd v. United States, 116 U.S. 616 (1886).*



In the case of *Weeks v. United States, 232 U.S. 383 (1914)*, this Court formulated the precursor to the present exclusionary rule. In *Weeks*, as in its predecessor *Adams*, the Court was confronted with a Fourth Amendment violation by federal law enforcement officers. The *Weeks* Court admonished that "[t]he tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions" would not be tolerated. Thus, this Court ruled that, because inculpatory personal papers had been confiscated in violation of defendant's Fourth Amendment rights, the papers should have been returned to defendant on his motion prior to trial, and not used as evidence at trial. *Id. at 398.* The sanctions required by *Weeks* were obviously intended for purposes of deterrence and were directed solely to the conduct of federal law enforcement authorities who had violated the Fourth Amendment in their attempts to obtain material for use in criminal prosecutions.

This reasoning, that limitations on the use of unconstitutionally seized evidence could deter law enforcement officers from violating the Fourth Amendment, was further developed in *Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).* In that case, Department of Justice officials and the United States marshal obtained corporate records using a method which was conceded by all parties to be in violation of the United States Constitution. Upon defendant's demand and the trial court's order, the government returned the original documents it had seized, but retained copies. The government then used the knowledge obtained from the illegal seizure to subpoena the original documents. *Id. at 390-391.* This Court ruled that law enforcement authorities could make no use of the unconstitutionally seized evidence or the knowledge gained from the unconstitutional seizure of evidence. *Id. at 392.*

The following year, this Court ruled that in certain circumstances a defendant could assert a violation of his Fourth Amendment rights and move for the return of property during, rather than only before, a criminal trial. *Amos v. United States, 255 U.S. 313 (1921); Gouled v. United States, 255 U.S. 298 (1921).* Shortly thereafter, when faced with a case in which the defendant could not move for the return of property without incriminating himself, this Court decided that illegally seized contraband could be suppressed even absent a motion for return of the property. *Agnello v. United States, 269 U.S. 20, 34 (1925).* It was still clear, however, that the exclusionary

rule was intended only to deter abuses by federal law enforcement authorities. *Byars v. United States, 273 U.S. 28 (1927).* Although the rule was later expanded to prohibit the federal use of evidence illegally seized by state authorities and turned over to federal authorities, *Elkins v. United States, 364 U.S. 206, 222-224 (1960); see Benanti v. United States, 355 U.S. 96, 102 (1957); Lustig v. United States, 338 U.S. 74, 79 (1949),* and thereafter extended *in toto* to the states, *Mapp v. Ohio, 367 U.S. 643 (1961),* the primary focus of the rule has remained the deterrence of unconstitutional searches performed by law enforcement officials.

Admittedly, this Court has recognized, at various times, "the imperative of judicial integrity" as a second possible justification for the exclusionary rule. Under that rationale, the judiciary would become "accomplices" in illegality by admitting evidence derived from the unconstitutional actions of law enforcement officers. *Lee v. Florida, 392 U.S. 378, 385-386 (1968); McNabb v. United States, 318 U.S. 332, 345 (1943).* Indeed, in *Elkins v. United States, supra,* the Court seemed to rely equally on deterrence and judicial integrity. Nevertheless, despite these temporary diversions, the single enduring reason for the existence of the exclusionary rule has been the deterrence of illegal searches by law enforcement officers.[5] Therefore, in *Mapp v. Ohio, supra,* this Court, in requiring the states to apply the Fourth Amendment exclusionary rule, noted that the government must teach obedience to law by its own example, but placed primary emphasis on the deterrent effect of the rule. *367 U.S. at 655-656, 659.* The scope to be afforded the imperative of judicial integrity was seemingly limited in *United States v. Peltier, 422 U.S. 531 (1975),* in which the Court held that the imperative was not offended by use of evidence derived from the good faith actions of law enforcement officers, even if the officers were later deemed to have

5 On occasion, this Court has observed that the exclusionary rule serves an educational purpose because it encourages law enforcement officers to learn to limit searches and seizures to those constitutionally permissible. *See Elkins v. United States, 364 U.S. at 220-222.* This purpose is, however, interconnected with the deterrent purpose of the rule. Indeed, it has been suggested that, if a jurisdiction developed a system of educating law enforcement agents coupled with an administrative system of disciplining those individuals or agencies failing to comply with the mandates of the Federal Constitution, a rule which requires invariable exclusion of illegally seized evidence would have no purpose. Goodparten, "An Essay on Ending the Exclusionary Rule," *33 Hastings L.J. 1065, 1107-1108 (1982).*



acted unconstitutionally. *Id. at 536-538.* Finally, the vitality of this doctrine was seriously eroded by *Stone v. Powell, 428 U.S. 465 (1976),* where this Court stated:

> While courts, of course, must ever be concerned with preserving the integrity of the judicial process, this concern has limited force as a justification for the exclusion of highly probative evidence....The primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment rights. *[Id. at 485-486].*[6]

One cannot fail to note the irony in justifying the suppression of evidence in order to achieve judicial integrity. Indeed, when illegally seized evidence is suppressed, it is recognized that the integrity of the truth-finding process itself is thereby impaired. *See United States v. Havens, 446 U.S. 620, 626 (1980).*

It is thus clear that the historic reason for the exclusionary rule was the deterrence of unlawful searches and seizures by law enforcement authorities. This theme has been stressed repeatedly, and although other justifications for the rule have been advanced, all but deterrence have been discarded. In this regard, it is indeed worthy of note that this Court has never held that illegal searches by private individuals come within the ambit of the rule. *Burdeau v. McDowell, 256 U.S. 465 (1921); see Walter v. United States, 447 U.S. 649 (1980).* Moreover, in those few instances where searches by persons such as officers of administrative agencies have been held subject to the rule, it has been clear that these agents were involved primarily in a public safety function which required their acting to enforce laws and regulations having consequences which were, at the least, quasi-criminal. *See, e.g., Michigan v. Tyler, 436 U.S. 499 (1978)* (search of fire-damaged premises by police or fire officials to investigate cause of fire); *Marshall v. Barlow's, Inc., 436 U.S. 307 (1978)* (searches of work areas by Occupational Safety and Health Administration investigators); *Camara v. Municipal Court, 387 U.S. 523 (1967)* (warrantless search of premises by investigators for San Francisco Department of Public Health).

6 It should also be noted that Justice Stewart, one of the strongest advocates of the imperative of judicial integrity, has recently written that it was never his intention to imply that this doctrine provided a constitutional basis for the rule. Stewart, "The Road to *Mapp v. Ohio* and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search and Seizure Cases," *83 Colum L. Rev. 1365, 1382 n.2 (1983).*

Additionally, this Court recently, in *United States v. Johnson, 457 U.S. 537, 102 S.Ct. 2579 (1982)*, again emphasized that the purpose of the rule is to deter illegal police conduct. *Id. at _____, 102 S.Ct. at 2592-2594.* Indeed, both the majority and those Justices who dissented agreed that the rule was understood to act "as a deterrent to unconstitutional police conduct."[7] *Id. at _____, 102 S.Ct. at 2595; see id. at _____, 102 S.Ct. at 2593-2594.* **It has thus remained unmistakably clear that exclusion of unlawfully seized evidence has been and continues to be required only if the exclusion would serve to deter unlawful conduct by law enforcement officers. We strongly urge that it is against this standard that searches by school teachers and administrators must be measured.**

In evaluating the need for a deterrent sanction, it is first necessary to identify those who are to be deterred. The instant matter concerns a search undertaken by school officials for a purely disciplinary purpose in which evidence of criminality was uncovered. The question is whether such evidence may be admitted in a subsequent criminal proceeding. It must be remembered that such school officials are not charged with enforcement of the criminal law. Rather, they seek to educate children and, in so doing, strive only to maintain an institutional environment conducive to such instruction. In their pursuit of this goal, school authorities may indeed uncover evidence of crime, but consideration of whether such evidence can or cannot be used by a different authority in a wholly different context "falls outside the offending [school official's] zone of primary interest." *See United States v. Janis, 428 U.S. 433, 458 (1976)* (evidence obtained by a state criminal law enforcement officer in good faith reliance on a warrant which later proved to be defective, while inadmissible in the state court, is admissible in a federal civil tax proceeding). Under such circumstances, the suppression of the evidence in a subsequent criminal trial would not "provide significant, much less substantial, additional deterrence," *id.;* application of the exclusionary rule to searches performed by school officials is, therefore, wholly unjustified.

It cannot be emphasized too strongly that the obligation of school administrators is not to enforce the criminal law, but to provide quality education to all children. *See, e.g., San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 29-30 (1973).* When, under a system

7 It is noted that the dissent also referred to the traditional value of judicial integrity as noted in *United States v. Peltier, 442 U.S. 531.*



of compulsory public education, parents must entrust their children to the public schools, parents have a right to expect that the schools will, to the best of their ability, protect the students and insulate them from harmful influences while pursuing the school's primary mission of educating them. While education remains the primary concern of school authorities, when the state assembles large numbers of young people in schools, it incurs a duty to protect them from being harmed. This duty of the school authorities to maintain "a proper educational environment," *3 W. LaFave, Search and Seizure § 10.11 at 458 (1978)*, carries with it a concomitant right of the students to pursue educational endeavors without exposure to danger or undue disruption.

It is, of course, painfully obvious that educators cannot properly discharge their duty to educate students if they are forced to function in an environment in which drugs and weapons play a major part.[8] When drugs and weapons are commonplace in the school environment, the inevitable result is a crippling of our educational system. Because protecting students is directly related to the educational process, it is essential that school administrators have broad supervisory and disciplinary powers. Indeed, as this Court has recognized, children in attendance at public schools occupy a different constitutional position from that enjoyed by adult citizens. For, while adults have an absolute right to security from physical menaces or assaults, "the State itself may impose such corporal punishment as is reasonably necessary 'for the proper education of the child and for the maintenance of group discipline.'" *Ingraham v. Wright, 430 U.S. 651, 661-662 (1977), citing 1 F. Harper & F. James, Law of Torts § 3.20 at 292 (1956).* In *Ingraham*, this Court refused to formulate a rule of procedural due process governing corporal punishment in schools because such action "would significantly burden the use of corporal punishment as a disciplinary measure." *430 U.S. at 680.*

8 According to national statistics, 22,759 persons under age 18, the school-age population, were arrested for weapons offenses in 1982; 76,208 children under age 18 were arrested for drug abuse violations in that same year. *Crime in the United States*, Uniform Crime Reports, 1982, Federal Bureau of Investigation, Table 34, at 182. During 1982, approximately ten percent of the nation-wide number of weapons arrests of children under age 15 occurred in New Jersey, far more than this State's proportionate share based on population. *Crime in New Jersey*, Uniform Crime Report, 1982, Division of the State Police, State of New Jersey.

As discussed above, the exclusionary rule is justified because it is viewed as a deterrent to future unlawful police conduct. There is nothing sacrosanct about the exclusionary rule; it is not embedded in the Constitution, nor is it a personal right. It is now well-established that "the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved" by an unlawful search. *United States v. Calandra, 414 U.S. 338, 348 (1974).* And, as with any remedial device, its application is restricted to those areas where its remedial objectives are "most efficaciously served." *Id.* Hence, it is clear that suppression of evidence is not a right conferred by the Fourth Amendment but, rather, is a remedy designed to effectuate those rights. Stewart, "The Road to *Mapp v. Ohio* and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search and Seizure Cases," *83 Colum. L. Rev. 1365, 1390 (1983).*

In the case of a search of a student by school officials, the deterrent objective cannot be achieved and the rule must be deemed inapplicable. Even where a search is conducted by law enforcement officers, the rule is not automatically applied; rather, in determining whether to apply the rule, the benefits of deterrence are weighed against the substantial detriment to society and the truth-finding process inherent in excluding relevant evidence of criminality. *United States v. Calandra, 414 U.S. at 347; see United States v. Ceccolini, 435 U.S. 268 (1978).* Evidence should be excluded only where the benefit accruing to society from the additional deterrent to unlawful police practices equals or exceeds the detriment to society caused by the release of criminals. Accordingly, this Court has refused to rule "that anything which deters illegal searches is thereby commanded by the Fourth Amendment." *Alderman v. United States, 394 U.S. 165, 174-175 (1969).*

The opinions of this Court concerning the suppression remedy have recognized the serious consequences of suppression of probative and relevant evidence of crime. Indeed, in recent years the continuing vitality of the exclusionary rule has been questioned by members of this Court. *See, e.g., Illinois v. Gates, ____ U.S. ____, 103 S.Ct. 2317, 2340-2344 (1983)* (White, J., concurring); *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narc., 403 U.S. 388, 412-424 (1971)* (Burger, J., dissenting). Hence, the Court has articulated a balancing test for determining the application of the exclusionary rule.



Unless the benefits of extending the rule to actions by school officials attempting to maintain school discipline outweigh "further encroachment upon the public interest" *(Alderman v. United States, 394 U.S. at 175)* by derogation of the truth-finding process in criminal prosecutions, this Court should decline to further extend the exclusionary rule. Where its deterrent purposes will not be served, there is no justification for the rule. *See Desist v. United States, 394 U.S. 244, 254 n.24 (1969).*

In balancing the possible deterrent benefits of applying the exclusionary rule against its cost to society in the context of public school searches, it is manifest that the balance weighs heavily against excluding evidence.[9] Indeed, it has been argued that exclusion can be an effective deterrent only if two conditions are met: (1) the searcher must have a strong interest in obtaining convictions, and (2) the searcher must conduct searches and seizures regularly in order to be familiar enough with the rules to adapt his methods to conform to them. *Note, 19 Stan. L. Rev. 608, 614-615 (1967).* Neither condition can be met in the case of a public school official. The assistant vice-principal in this case had no interest in obtaining a criminal conviction. Indeed, the object of his search was evidence of a school disciplinary infraction wholly unrelated to any criminal prosecution. The possibility of suppression in a subsequent criminal proceeding, had it occurred to the assistant vice-principal, would not have deterred him from enforcing the school's rules, which was his primary concern.

In this regard, the incentive for school officials to search, occasioned by their educational responsibilities, could not be effectively lessened by the suppression of evidence at a subsequent criminal trial. School officials have a duty to enforce school regulations, to safeguard students during school hours and to maintain a drug-free learning environment. Under the circumstances of this case, the vice-principal should undoubtedly have followed the same course of conduct in his attempt to enforce the school's non-smoking regulations regardless

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9 In the case of a student processed through the juvenile court system, there is an additional cost to applying the exclusionary rule. The primary purpose of juvenile delinquency proceedings is to rehabilitate rather than punish the youthful offender. *See McKeiver v. Pennsylvania, 403 U.S. 528, 539 (1971); Kent v. United States, 383 U.S. 541, 554-555 (1966).* Where evidence is suppressed in a juvenile proceeding, the injury to the truth-finding process is exacerbated by frustration of this ameliorative purpose and the juvenile, as well as society, is injured.

of his consideration, or knowledge, that any "evidence" seized would not be used later in a court of law.

Furthermore, school authorities conduct searches infrequently, and even less frequently come in contact with the criminal justice system. They are charged with the duty of education, not law enforcement. Hence, their interest in the law of search and seizure is tangential at best. There is little reasonable possibility that a school official would learn the law governing searches and seizures and be able to conform his conduct accordingly. The facts of this case demonstrate this principle quite plainly. The vice-principal, considering the juvenile's ready compliance with his request to hand over her purse, might well have concluded that she consented to the search. Under the standard developed for law enforcement officers by the New Jersey courts in *State v. Johnson, 68 N.J. 349, 346 A.2d 66 (1975)*, however, the consent would be invalid because the juvenile was not specifically informed of her right to refuse permission to search. It is unreasonable to require principals, teachers and others not involved in law enforcement to familiarize themselves with complex legal principles which give lawyers and judges pause, and then apply these principles to emergent factual situations.

It could be argued that allowing law enforcement officers to make use of evidence obtained by other public officials who are not involved in law enforcement would reintroduce the long-discarded "silver platter" doctrine. *Lustig v. United States, 338 U.S. at 79.* This is incorrect. The "silver platter" doctrine arose at a time when the exclusionary rule was not yet applicable to the states. Federal law enforcement authorities who conducted illegal searches were able to turn the improperly seized evidence over to the states "on a silver platter" for use in state criminal trials. *See Elkins v. United States, supra.* The silver platter doctrine was discarded for a variety of reasons, none of which is applicable to the school situation. First, in *Elkins v. United States, supra,* Justice Stewart noted that cooperative law enforcement efforts between state and federal authorities were to be commended and encouraged and that allowing the doctrine to continue under these circumstances would provide an "inducement to subterfuge and evasion." *364 U.S. at 222. See also United States v. Peltier, 422 U.S. at 537-539.* Because school authorities do not become involved in law enforcement investigations, no such temptation exists. If, of course, a school official acts on behalf of law enforcement officers in a particular case, the courts



are free to suppress the evidence thereby obtained, because it would then be clear that the school authorities would, in fact, be acting as agents of the law enforcement authorities.

A second reason for disallowing the silver platter doctrine was the imperative of judicial integrity. *Elkins v. United States, 364 U.S. at 222-223.* However, this "imperative" has itself been called into question. It is well to argue that the Court should not involve itself in any way in an action violative of the federal Constitution, *Olmstead v. United States, 277 U.S. 438, 470 (1928)* (Holmes, J., dissenting), but it must also be remembered that by mandating exclusion, the Court requires that the factfinder be presented with a distorted picture of the case and, in a sense, perpetrates a fraud upon the factfinder. *See Stone v. Powell, 428 U.S. at 485.* Additionally, it must be remembered that in many situations use of unconstitutionally seized evidence is permitted. *See, e.g., United States v. Havens, supra* (defendant may be impeached by evidence illegally obtained); *Rakas v. Illinois, 439 U.S. 128 (1978)* (standing limitations on who may object to the introduction of unconstitutionally seized evidence); *United States v. Calandra, supra* (illegally seized evidence may be used in grand jury proceedings); *Henry v. Mississippi, 379 U.S. 443 (1965)* (counsel's deliberate bypassing of contemporaneous objection to tainted evidence in state court constitutes waiver of federal claim of constitutional violation); *Frisbie v. Collins, 342 U.S. 519 (1952)* (power of a court to try a person for a crime is not impaired by the fact he was brought within the court's jurisdiction by forcible abduction). Thus, this doctrine would provide no support for insertion of the exclusionary rule into the school search situation.

As this Court observed in *United States v. Janis, supra,* "[t]here comes a point at which courts, consistent with their duty to administer the law, cannot continue to create barriers to law enforcement in the pursuit of a supervisory role that is properly the duty of the Executive and Legislative Branches" of government. *428 U.S. at 459.* Supervision of school officials who conduct searches of their students must properly be the primary obligation of a department of government other than the judicial branch. Congress has provided persons aggrieved by unreasonable searches with legal redress in the form of a 1983[10] action for damages, and many state legislatures have provided similar civil damages remedies. Moreover, school administrators, faced with the specter of unreasonable searches by school

10 *42 U.S.C. § 1983.*

personnel, may choose to enact internal disciplinary measures. In any event, use of the exclusionary rule as a judicial remedy for unreasonable school searches cannot achieve the purpose of general, or even specific, deterrence and is therefore unwarranted.

Since the exclusionary rule was made applicable to the states in *Mapp v. Ohio, supra,* police have been educated in the correct methods of performing searches and their knowledge may have deterred the performance of some unlawful searches. The impetus for police instruction in the constitutional niceties of search and seizure law has been the local prosecutors' offices, which have found their own law enforcement functions to be inhibited by the suppression of probative evidence resulting from unconstitutional police searches. Because police and prosecutors share the common occupational objective of enforcement of the criminal laws and constantly interact to achieve their objective, police officers have an incentive to become aware of the constitutional constraints on their investigative abilities. This same motivation is wholly absent on the part of school officials who do not in the normal course collaborate with prosecutors and do not function to enforce the law. Indeed, teachers have no professional incentive to follow stringent procedures otherwise correct for law enforcement officers, because they would have little interest in either developing a cooperative relationship with the prosecutors or in convicting their students of crimes.

The facts of the present case illustrate the lack of justification for extending the exclusionary rule to a school search. A teacher observed a group of girls in a restroom and identified T.L.O. and another girl as smoking cigarettes, a prohibited activity. The assistant vice-principal could have punished T.L.O. based solely upon the teacher's observation. T.L.O., however, disputed the accuracy of the teacher's perception and not only denied smoking at that time, but denied that she smoked at all. T.L.O.'s denial sharply contrasted with the immediate admission of T.L.O.'s companion. This second girl acknowledged smoking and, without further investigation, the vice-principal required her to attend a smoking clinic as punishment. Faced with T.L.O.'s absolute denial and the second girl's admission, the school official had no practical alternative but to take the reasonable step of requesting and opening T.L.O.'s purse. If no cigarettes had been found, it is probable that T.L.O. would have received only a warning.



In enforcing school discipline, it is prudent to leave educators with choices unrestricted by considerations of evidentiary questions. A teacher concerned with preserving possible evidence would be hard-pressed to administer or enforce the school's own regulations. Concern with application of the exclusionary rule could have a chilling effect on proper inquiries into minor school infractions. Such inquiries are often necessary to maintain discipline in schools. Indeed, the New Jersey Supreme Court appeared to recognize the necessity for such school disciplinary investigations when it stated:

> We do not disparage the school officials' actions in these cases. They must often, as here, act on short notice based on the information they possess.... The issue here is not criticism of their actions.... [*State in the Interest of T.L.O., 94 N.J. at 349, 463 A.2d at 943*].

The New Jersey Supreme Court thus appeared to recognize that the actions of the school officials were contextually reasonable. But without further justification, that court went on to apply the exclusionary rule despite the fact that there was no possibility that its deterrent purpose could be achieved.

Thus, as demonstrated by the foregoing arguments, application of the exclusionary rule to school searches would be costly and ineffective. By definition, the suppression of evidence impedes the search for truth and frustrates achievement of that goal. To do so under the facts of the present case, moreover, would impose a stiff societal cost. In attempting to maintain discipline by enforcing the school's non-smoking regulation, a vice-principal, in an action "not disparaged" by the state court, opened a student's purse and found evidence that the girl was selling drugs to other students. Although the girl was guilty of using the schoolhouse to dispense drugs, the evidence of the girl's crime was suppressed and she returned undeterred to the classroom. The detrimental result of this action on public education cannot be overestimated. If school authorities are unable to take effective action to enforce discipline and provide a crime-free environment for learning, then the primary purpose of the public school, that is, universal education, will not be achieved. The incalculable loss falls upon the well-intentioned pupils and their [redacted]ocent parents.

In sum, balanced against the cost, there is little or no benefit to be gained by application of the exclusionary rule. The primary value

of the exclusionary rule, deterrence, is not present, for school officials acting in the course of their employment have little or no interest in criminal proceedings and are not likely to know whether or why evidence they have discovered has been suppressed. Because it is unlikely that the future conduct of school officials can be "corrected" or deterred by application of the exclusionary rule, there exists no reason to extend the rule to the school search situation. Thus, application of the exclusionary rule to searches performed by school authorities is without practical benefit or justification.



## CONCLUSION

For the foregoing reasons, the State of New Jersey urges this Court to rule that the exclusionary rule is inapplicable to school searches performed by school administrators and teachers and to reverse the decision of the New Jersey Supreme Court suppressing evidence.

Respectfully submitted,

s/I.I.K.

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